

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4993 of 2001

with

SPECIAL CIVIL APPLICATION No 4995 of 2001

with

SPECIAL CIVIL APPLICATION No 4996 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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UPENDRABHAI PURUSHOTTAMDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4993, 4995, 4996 of 2001
MR AJ PATEL for Petitioner No. 1-4
MR SP SEN ASSTT GOVT PLEADER for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2001

COMMON ORAL JUDGEMENT

#. Heard Mr.A.J.Patel, learned advocate appearing on behalf of the petitioners in all three petitions and Mr.S.P.Sen, learned AGP appearing on behalf of the respondents.

Initially this Court has issued notice on 6th July, 2001 made it returnable on 3rd August, 2001. Thereafter, this Court issued RULE by order dated 17th August, 2001 made it returnable on 6th September, 2001. Mr.S.P.Sen, learned AGP appearing on behalf of the respondents has waived service of notice of rule on behalf of the respondents and at the same time, this Court has directed the respondents to file the counter affidavit on or before 31st August, 2001. However, in spite of the clear direction issued by this Court, no counter affidavit has been filed by the respondent No.2.

#. The brief facts giving rise to these three petitions are as under :-

So far as Special Civil Application No.4993 of 2001 is concerned, the petitioners inherited Vada Land bearing City Survey Nos.74 and 75 situated in village Nava Vadaj, Taluka City and District Ahmedabad from their forefathers. The name of the father of the petitioners was shown in the property card since before 1973 in respect of the said Vada Land. The Government of Gujarat had published Vada Code on 22nd June, 1968 containing guidelines for dealing with village site and agricultural lands. The Government of Gujarat had passed a Resolution on 26th July, 1979 laying down guidelines for conferring permanent tenure in respect of Vada Lands held by the holders on payment of 50 % of the market price subject to certain conditions stipulated in the said Resolution. The Government of Gujarat had passed another Resolution dated 16th December, 1979 modifying the aforesaid resolution. The Government of Gujarat passed a resolution on 25th April, 1980 containing revised rules in connection with the lands of village site and agricultural lands. The Government of Gujarat passed a further resolution on 19th April, 1986 substituting condition No.3 of the Government Resolution dated 26th July, 1979 as to occupancy price. Pursuant to the Government Resolution which has been referred aforesaid, the Collector issued a notice to the petitioners on 2-8/9-1989 requiring them to pay the occupancy price to the Government. On 25th September, 1989 the petitioners deposited the requisite amount with the Talati of Nava

Vadaj and by letter dated 27th September, 1989 the petitioners informed the Collector, Ahmedabad regarding payment of the requisite amount by them and also sent a xerox copy of the receipt evidencing payment made by the petitioners. Thereafter, no order has been passed by the Collector in pursuance of the payment which has been made by the petitioners. Therefore, on 25th August, 1999 the petitioners made a representation to the Collector requesting the Collector to mutate their names in the revenue record in respect of the Vada Land held by them. The petitioners have also pointed out that in case of similarly situated other persons, one order has been passed by the Collector on date 3rd September, 1992 in favour of the holder directing mutation of the Vada Lands bearing City Survey No.14 of Nava Vadaj. Thereafter, the petitioners have served a statutory notice on 11th April, 2001 to the respondents calling upon them to effect appropriate entry in the revenue record in the names of the petitioners and delete the entry made in the revenue record to the effect that the land in question has vested in the Government in respect of the Vada Land bearing City Survey No.74 and 75 of Nava Wadaj Taluka City. The petitioners made enquiries in the offices of the respondents on number of occasions and made oral representations to them to respond to the said statutory notice. However, none of the respondents has so far responded to the said notice and that has given rise to the present petition.

In respect of Special Civil Application No.4995 / 2001, similar order has been passed by this Court issuing Rule on 17th August, 2001 and also issued direction to the respondent No.2 to file counter affidavit but so far no counter has been filed by the respondent No.2. It is noted that this petition is based on almost identical facts except City Survey No.104 situated in village Nava Vadaj, Taluka City District Ahmedabad. Notice of Collector directing the petitioner to deposit the amount of occupancy price is dated 2nd August, 1989 and the petitioners had deposited the amount of Rs.3.728-65 ps. on 20th October, 1989 with the Talati of Nava Vadaj. One additional fact which has been pointed out in this petition is that the Collector, Ahmedabad has requested the Deputy Secretary to the Government of Gujarat, Revenue Department to pass appropriate orders for regularising the grant of Vada Lands to the holders by his letter dated 20th June, 1999. In the present case, the statutory notice has been served to the respondents by the petitioners on date 16th April, 2001 and the rest of the facts are similar to the earlier petition i.e. Special Civil Application No.4993 / 2001.

The Special Civil Application No.4996 / 2001 is also based on identical facts and this Court has also passed order issuing Rule on 17th August, 2001 making it returnable on 6th September, 2001 with a direction to the respondent No.2 to file affidavit in reply but no counter has been filed by the respondent No.2. Other facts of the earlier two petitions are identical in the present petition except City Survey Nos.73 and 76 situated at village Nava Vadaj Taluka City District Ahmedabad. In the present case also, the petitioner has deposited the amount of occupancy price of Rs.5,683.95 ps on 20-9-1989 and the statutory notice has been served by the petitioner on 25th May, 2001.

#. Learned Advocate Mr.A.J.Patel has submitted that pursuant to the Government Resolution issued by the State Government, Collector, Ahmedabad has issued notice to the petitioners to deposit occupancy price and the same have been deposited by respective petitioners of this group of petition and the same was informed to the Collector by sending xerox copy of the receipt evidencing the payment of petitioners. Thereafter, representation has been made and even a statutory notice has been served to the respondents but no response nor any reply has been given by the respondents. Mr.A.J.Patel, learned advocate has further submitted that the Collector, Ahmedabad has passed order on 3rd September, 1992 in favour of the similarly situated person alike petitioners and accordingly directed mutation of Vada Lands bearing City Survey No.14 of Nava Vadaj in favour of the holder who was in fact similarly situated as the petitioners. This fact was also brought to the notice of the concerned authority but despite of this fact, this aspect has also not been considered by the respondents. Therefore, learned advocate Mr.A.J.Patel has submitted that some necessary direction may be issued to the respondents to pass appropriate orders after considering the Government Resolutions dated 22nd June, 1968, 26th July, 1979, 26th December, 1979, 25th April, 1980 and 19th April, 1986 along with order dated 3rd September, 1992 passed by the Collector in favour of the holder of the Vada Lands similarly situated with the petitioners and to take appropriate decision in respect of the representation made by the petitioners and statutory notice which has been served by the petitioner to the respondents within some reasonable time and to effect appropriate entry in the revenue record in the name of of the petitioners for the lands in question involved in all three petitions by deleting the entries made in the revenue record.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondents has submitted that the Revenue Department, State Government has issued Vada Land Code on 26th June, 1968. The first resolution wherein rules and regulations have been framed for the allotment of the Vada land in favour of the holders and thereafter various changes have been made by the State Government and petitioners are required to comply the conditions which have been incorporated in the various resolutions issued by the State Government. However, he also submitted that if the petitioners have already paid the occupancy prices in response to the notice issued by the Collector, then some suitable directions may be issued to the respondents to pass appropriate orders after considering the various Government Resolutions issued by the State Government from time to time in respect of the Vada Land. However, Mr.S.P.Sen, learned AGP Mr.Sen has further submitted that according to the Government Resolutions, the Vada Land is required to be kept open, whereas the petitioners have constructed upon the Vada land in question. As against that, Mr.A.J.Patel, learned Advocate has submitted that in the case of the Vada Land holder who is similarly situated with the petitioners, the respondent Collector, Ahmedabad has passed order on date 3rd September, 1992, wherein condition has been incorporated to the effect that whatever existing construction even if the same is not in accordance with the rules and regulations, the same is required to be regularised by the concerned authority and even for new construction also, necessary permission can be obtained from the concerned authority like AMC or AUDA. Therefore, learned Advocate Mr.A.J.Patel has submitted that even on Vada Land, construction is permissible and on that condition also, the Collector may pass necessary orders after considering the various Government resolutions referred to hereinbefore.

#. I have considered respective submissions of the learned advocates for the parties. On perusal of the record of these cases, one fact is clear that initially the Government has published Vada Code containing guidelines for dealing with the village site and agricultural lands and thereafter, by issuing various Government resolutions on 26th July, 1979, 26th December, 1979, 25th April, 1980 have revised and modified the policy from to time. After considering all these Government Resolutions, it is pertinent to note that in pursuance of the Government Resolutions, the Collector, Ahmedabad has issued notice to the petitioners to pay requisite occupancy price for mutating entry for the Vada land in favour of the petitioners. In response to said

notice issued by the Collector, Ahmedabad, the petitioners have deposited the requisite amount and informed the concerned authority along with xerox of the receipt and thereafter made representations from time to time. Lastly, the petitioners have also served statutory notice to the respondents but there was no response nor any reply given by the respondents. Not only that, no counter affidavit has been filed by the respondents against the present petitions. Therefore, in light of this fact and considering one important aspect that in case of Vada Land holder who is similarly situated to the petitioners, in whose favour the Collector, Ahmedabad has passed order on 3rd September, 1992 directing mutation of entry in respect of the Vada Land situated in City Survey No.14 of Nava Vadaj which admittedly belongs the very area, where the Vada Land in question, involved in these petitions, are situated. Considering all these aspects of the matter, it is considered that if some suitable direction is issued to the respondents to take appropriate decision after considering various Government resolutions referred to hereinbefore and further taking into account the order dated 3rd September, 1992 passed by the Collector, Ahmedabad in favour of the Vada land holder similarly situated with the petitioners, will meet the ends of the justice.

#. In the result, all three petitions are allowed. It is directed to the respondent No.2 to take appropriate decision after taking into account the various Government Resolutions dated 22nd June, 1968, 26th July, 1979, 26th December, 1979 and 19th April, 1986 and any other related Government resolution in respect of the Vada Land and further taking into account the order dated 3rd September, 1992 passed by the Collector, Ahmedabad in favour of the Vada Land holder of City Survey No.14 of Nava Vadaj who is admittedly similarly situated with the petitioners and to pass appropriate order in accordance with law within period of one month from the date of receiving certified copy of writ of this order. It is also further directed to the respondent No.2 to pass speaking and reasoned order. However, in case of any adverse order, if passed by the respondent No.2 against the petitioners in respect of representation and statutory notice served by the petitioners on the respondents, in that case, it would be open for the petitioners to challenge the same before appropriate forum in accordance with law. Rule is made absolute to aforesaid extent in each of the petition. No order as to costs. Direct Service is permitted.

Date : 6-9-2001 [H.K.Rathod, J.]

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